

Public Chapter 466

HOUSE BILL NO. 905

By Representative Brenda Turner

Substituted for: Senate Bill No. 1460

By Senators Fowler, Henry, Rochelle, McNally, Burks

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 39, relative to registration and monitoring of certain offenders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 39, is amended by deleting Part 1 in its entirety and by substituting instead the following:

§ 40-39-101. This chapter shall be known and may be cited as the "Sexual Offender Registration and Monitoring Act".

§ 40-39-102. As used in this chapter, unless the context otherwise requires:

(1) "Local law enforcement agency" means:

(A) Within the territory of a municipality, the municipal police force;

(B) Within the territory of a county having a metropolitan form of government, the metropolitan police force; and

(C) Within the unincorporated territory of a county, the sheriff's office;

(2) "Sexual offender" means a person who is, or has been, convicted in this State of committing a sexual offense or who is, or has been, convicted in another State or another country, or who is or has been convicted in a federal or military court, of committing an act which would have constituted a sexual offense if it had been committed in this State; provided, that:

(A) Conviction, pretrial diversion, judicial diversion, or any other alternative to incarceration occurs on or after January 1, 1995; or

(B) If conviction occurred prior to January 1, 1995, the person:

(i) Remains under or is placed on pretrial diversion, judicial diversion, probation, parole, or any

other alternative to incarceration on or after January 1, 1995;

(ii) Is discharged from pretrial diversion, judicial diversion, probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

(iii) Is discharged from incarceration without supervision on or after January 1, 1995;

(3) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constituted the criminal offense of:

(i) Aggravated rape, under § 39-13-502;

(ii) Rape, under § 39-13-503;

(iii) Aggravated sexual battery, under § 39-13-504;

(iv) Sexual battery, under § 39-13-505;

(v) Statutory rape, under § 39-13-506;

(vi) Aggravated prostitution, under § 39-13-516;

(vii) Sexual exploitation of a minor, under § 39-17-1003;

(viii) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(ix) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;

(x) Incest, under § 39-15-302;

(xi) False imprisonment of a minor, under § 39-13-302, (except when committed by a parent of such minor);

(xii) Kidnapping of a minor, under § 39-13-303, (except when committed by a parent of such minor);

(xiii) Aggravated kidnapping of a minor, under § 39-13-304, (except when committed by a parent of such minor);

(xiv) Especially aggravated kidnapping of a minor, under § 39-13-305, (except when committed by a parent of such minor);

(xv) Rape of a child, under § 39-13-522; or

(xvi) Attempt, under § 39-12-101, solicitation, under § 39-12-102, or conspiracy, under § 39-12-103, to commit any of the offenses enumerated within this subdivision (3)(A); or

(B) The commission of any act that, prior to November 1, 1989, constituted the criminal offense of:

(i) Aggravated rape, under § 39-2-603 [repealed];

(ii) Rape, under § 39-2-604 [repealed];

(iii) Aggravated sexual battery, under § 39-2-606 [repealed];

(iv) Sexual battery, under § 39-2-607 [repealed];

(v) Statutory rape, under § 39-2-605 [repealed];

(vi) Assault with intent to commit rape or attempt to commit rape or sexual battery under § 39-2-608 [repealed];

(vii) Incest, under § 39-4-306 [repealed];

(viii) Use of minor for obscene purposes, under § 39-6-1137 [repealed];

(ix) Promotion of performance including sexual conduct by minor, under § 39-6-1138 [repealed];

(x) Criminal sexual conduct in the first degree, under § 39-3703 [repealed];

(xi) Criminal sexual conduct in the second degree, under § 39-3704 [repealed];

(xii) Criminal sexual conduct in the third degree, under § 39-3705 [repealed];

(xiii) Kidnapping of a minor, under § 39-2-303 (repealed), (except when committed by a parent of such minor);

(xiv) Aggravated kidnapping of a minor, under § 39-2-301 (repealed), (except when committed by a parent of such minor); or

(xv) Solicitation, under § 39-1-401 [repealed] or § 39-118(b) [repealed], attempt, under § 39-1-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], or conspiracy, under § 39-1-601 [repealed] or § 39-1104 [repealed], to commit any of the offenses enumerated within subdivision (3)(B); and

(4) "TBI" means the Tennessee Bureau of Investigation.

§ 40-39-103. Within ten (10) days following release on probation, parole, or any other alternative to incarceration; within ten (10) days following discharge from incarceration without supervision; within ten (10) days following any change of residence; and within ten (10) days after coming into a municipality or county in which the sexual offender temporarily resides or is domiciled for such length of time; each sexual offender shall complete a TBI sexual offender registration/monitoring form and shall cause such form to be delivered to TBI headquarters in Nashville. Sexual offender registration/monitoring forms shall require disclosure of the following information:

(1) Complete name as well as any alias or aliases;

(2) Date and place of birth;

(3) Social security number or numbers;

(4) State of issuance and identification number of any valid driver license or licenses;

(5) For a sexual offender on supervised release, the name, address, and telephone number of the registrant's parole officer, probation officer, or other person responsible for the registrant's supervision;

(6) Sexual offense or offenses of which the registrant has been convicted;

(7) Current place and length of employment;

(8) Current address and length of residence at such address;

(9) Race and gender; and

(10) Such other registration and/or monitoring information, including a current photograph, as may be required by rules promulgated by the TBI in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) In accordance with the provisions of this act, the TBI may require a registrant, or the registrant's supervising authority, to submit a current photograph of the registrant.

§ 40-39-104. At least once every ninety (90) days following receipt of the initial registration/monitoring form pursuant to § 40-39-103, the TBI shall, by certified mail return receipt requested, send a nonforwardable, verification/monitoring form to the registrant's last reported address. The form shall require verification of the continued accuracy of the most recent registration/monitoring form submitted by the sexual offender. Within ten (10) days following receipt of the verification/monitoring form, the registrant shall complete the form and shall cause such form to be delivered to TBI headquarters in Nashville.

§ 40-39-105. (a) Sexual offender registration/monitoring forms and verification/monitoring forms shall be designed, printed, and distributed by and at

the expense of the TBI. Sexual offender registration/monitoring forms shall be available from local law enforcement agencies; the TBI; the Tennessee Department of Correction; the Tennessee Department of Safety; and parole officers, probation officers, and other public officers and employees assigned responsibility for the supervised release of convicted felons into the community.

(b) (1) The officer or employee responsible for supervising a sexual offender who is, or has been, released on probation, parole, or any other alternative to incarceration, shall promptly:

(A) Obtain the offender's signed statement acknowledging that the named officer or employee:

(i) Has fully explained, and the offender understands, the registration and verification requirements and sanctions of this chapter; and

(ii) Has provided the offender with a blank TBI sexual offender registration/monitoring form and assisted the offender to complete the form.

(B) Obtain a current photograph of the offender.

(2) Forms for such statements of acknowledgment shall be designed, printed, and distributed by, and at the expense of, the TBI and shall require the officer or employee to report the offender's residential address. The officer or employee shall within three (3) days cause the signed and completed acknowledgment form, sexual offender registration/monitoring form and photograph of the offender to be delivered to TBI headquarters in Nashville.

(c) At least ninety (90) days prior to the release of a sexual offender from incarceration with or without supervision, the warden of the correctional facility or jail shall obtain the offender's signed statement acknowledging that the named warden or the warden's agent has fully explained, and the offender understands, the registration and verification requirements and sanctions of this chapter. If the offender is to be released without any type of supervision, the warden of the correctional facility or jail shall provide the offender with a blank TBI sexual offender registration/monitoring form and assist the offender to complete the form. The warden shall also obtain a current photograph of the offender. Forms for such statements of acknowledgment shall be designed, printed, and distributed by, and at the expense of, the TBI and shall require disclosure of the offender's anticipated residential address. The warden shall promptly cause the signed and completed acknowledgment form, the sexual offender registration/monitoring form and the photograph of the offender to be delivered to TBI headquarters in Nashville within three (3) days of the release of the offender.

(d) If the offender is placed on unsupervised probation, the court shall obtain the offender's signed statement acknowledging that the court has fully explained, and the offender understands, the registration and verification requirements and sanctions of this chapter. The court shall provide the offender with a blank TBI sexual offender registration/monitoring form and assist the offender to complete the form. The court shall also obtain a current photograph of the offender. Forms for such statements of acknowledgment shall be designed, printed and distributed by, and at the expense of, the TBI and shall

require disclosure of the offender's anticipated residential address. The court shall, within three (3) days, cause the signed and completed acknowledgment form, the sexual offender registration/monitoring form and the photograph of the offender to be delivered to TBI headquarters in Nashville.

(e) Through press releases, public service announcements, or through other appropriate public information activities, the TBI shall attempt to ensure that all sexual offenders, including those who move into this State, are informed and periodically reminded of the registration and verification requirements and sanctions of this chapter.

§ 40-39-106. (a) Using information received or collected pursuant to this chapter, the TBI shall establish, maintain, and update a centralized record system of sexual offender registration and verification information. The TBI shall promptly report current sexual offender registration and verification information to:

(1) The local law enforcement agency for the offender's place of residence;

(2) The local law enforcement agency for the offender's previous place of residence if a change of residence is indicated;

(3) The local law enforcement agency for the offender's place of employment;

(4) The local law enforcement agency for the offender's previous place of employment if a change of employment is indicated;

(5) When applicable, the probation officer, parole officer, or other public officer or employee assigned responsibility for the offender's supervised release; and

(6) The identification division of the Federal Bureau of Investigation.

(b) Whenever there is a factual basis to believe that such an offender has not complied with the provisions of this chapter, the TBI shall notify the District Attorney General and the probation officer, parole officer, or other public officer or employee assigned responsibility for the sexual offender's supervised release. Notification for a particular violation shall be reported only in the two (2) quarters immediately following the violation.

(c) For all offenses committed prior to July 1, 1997, except as otherwise provided in subsections (a) and (b), information reported on sexual offender registration/monitoring forms, verification/monitoring forms, and acknowledgment forms shall be confidential; provided, that the TBI or a local law enforcement agency shall release relevant information deemed necessary to protect the public concerning a specific sexual offender who is required to register pursuant to this chapter.

(d) If the TBI or a local law enforcement agency deems it necessary to protect the public concerning a specific sexual offender who is required to register pursuant to this part, such bureau or agency may notify the public by any means including the following:

- (1) Written notice;
- (2) Electronic transmission of registration information; or
- (3) Providing on-line access to registration information.

(e) Notwithstanding the provisions of any law to the contrary, officers and employees of the TBI; officers and employees of local law enforcement agencies; the District Attorneys General and their employees; officers and employees of the courts; probation officers; parole officers; and other public officers and employees assigned responsibility for sexual offenders' supervised release into the community; shall be immune from liability relative to their good faith actions, omissions, and conduct pursuant to this chapter.

§ 40-39-107. (a) No sooner than ten (10) years after termination of active supervision on probation, parole, or any other alternative to incarceration or no sooner than ten (10) years after discharge from incarceration without supervision, a person required to submit sexual offender/registration/monitoring forms and verification/monitoring forms may file a petition in the circuit court of the county in which the person resides for an order relieving the person of the continuing duty to submit such forms. The District Attorney General of the County shall be named and shall serve as the respondent in the petition.

(b) The court shall hold a hearing on the petition. In determining whether to grant the relief requested, the court shall consider, if available:

- (1) The nature of the offense that required registration;
- (2) The age and number of victims;
- (3) The degree of violence involved in the offense;
- (4) Other criminal and relevant noncriminal behavior of the petitioner both before and after the conviction that required registration;
- (5) The period of time during which the petitioner has not reoffended; and
- (6) Any other relevant factors.

(c) If, and only if, the court finds that the petitioner:

- (1) Has complied with the provisions of this chapter;
- (2) Is rehabilitated; and
- (3) Does not pose a threat to the safety of the public, then the court shall enter an order relieving the petitioner of the continuing duty to submit registration/monitoring forms and verification/monitoring forms. Upon receiving a certified copy of such order of the court, the TBI shall expunge from the centralized record system of sexual offender registration and verification information all data pertaining to the petitioner and shall so notify the local law enforcement agency for the petitioner's place of residence and the local law enforcement agency for the petitioner's place of employment.

(d) The records of a person who successfully completes a diversion program pursuant to Tennessee Code Annotated, Sections 40-15-102 through 40-15-105, shall not be removed and destroyed from the sexual offender registry except pursuant to this section if the offense for which prosecution was suspended was a sexual offense as defined by Tennessee Code Annotated, Section 40-39-102(3).

(e) The records of a person who is dismissed from probation and whose proceedings are discharged pursuant to Tennessee Code Annotated, Section 40-35-313, shall not be expunged from the sexual offender registry except pursuant to this section if the offense for which deferral and probation was granted was a sexual offense as defined by Tennessee Code Annotated, Section 40-39-102(3).

(f) No offender may file more than one (1) petition during any five (5) year period.

§ 40-39-108. (a) Knowing falsification of a sexual offender registration/monitoring form or verification/monitoring form shall constitute a Class A misdemeanor for the first offense, punishable by confinement in the county jail for not less than one hundred eighty (180) days. A violation under this chapter is a Class E felony if the offender has a prior conviction under this chapter. Additionally, if the person is on probation, parole, or any other alternative to incarceration, then such falsification shall also constitute sufficient grounds for, and may result in, revocation of probation, parole, or other alternative to incarceration. Knowing failure to timely disclose required information or photographs or to timely deliver required registration/monitoring or verification/monitoring forms to the TBI shall be deemed to be falsification to the same extent as actually providing false information.

(b) In a prosecution for a violation of this section, in lieu of live testimony the Tennessee Bureau of Investigation records custodian may, by sworn affidavit, verify that according to such records a sexual offender is in violation of the registration or verification requirements of this chapter.

§ 40-39-109. Upon receipt of notice of the death of a registered offender, the TBI shall expunge from the centralized record system of sexual offender registration and verification information all data pertaining to the deceased offender.

SECTION 2. This act shall take effect on July 1, 1997, the public welfare requiring it.